

116

THOUGHTS
ON THE
SUSPENSION
OF THE
HABEAS CORPUS ACT.

THE COURT

OF THE

REVENUE

OF THE

HABEAS CORPUS ACT

THOUGHTS
ON THE
SUSPENSION
OF THE
HABEAS CORPUS ACT.

“Cet écrit tend uniquement à la paix, par d'autres
“moyens à la vérité, que celui d'accorder à l'ambition
“tout ce qu'elle exige; comme si ses demandes n'étoient
“pas toujours suivies DE DEMANDES NOUVELLES: il tend
“à la paix, en démontrant, qu'on ne sauroit trop se hâter
“de faire avorter un plan, SIMPLE EN APPARENCE, mais
“PROFOND ET DANGEREUX, qui menace d'ENSANGLAN-
“TER l'Europe entière, OU DE L'ASSERVIR.”

Doutes sur la liberté de l'Escaut, par
LE COMTE DE MIRABEAU.

LONDON:

PRINTED FOR J. DEBRET, OPPOSITE BURLINGTON
HOUSE, PICCADILLY.

1794

S
UK
993.4
THO

TX
T 5248

REVISION

OF THE

HABEAS CORPUS ACT.

Cet acte tend uniquement à la punition des délinquants
et à la répression des crimes, par conséquent à la punition
des crimes et des délits, comme les délinquants n'ont
pas le droit de demander la réhabilitation de leur nom.
Il est en conséquence de la loi de la punition des crimes
et des délits, et de la répression des crimes et des délits.
Cet acte tend uniquement à la punition des délinquants
et à la répression des crimes, par conséquent à la punition
des crimes et des délits, comme les délinquants n'ont
pas le droit de demander la réhabilitation de leur nom.

May 28. 1924

Donné en la ville de Paris, le
le Comte de MIRABEAU.

LONDON.

THIS IS FOR A DEBENTURE OF THE
HABEAS CORPUS ACT.

1794

*From His Friend
The Author.*

ADVERTISEMENT.

THE following Thoughts had their origin in a very attentive consideration of the debates in Parliament (particularly of that in the House of Commons, on Saturday the 17th of May, immediately after which part of this was written, though soon laid aside) on the subject in question; a subject in itself, and in its circumstances, as important as has at any time existed in English history. It appeared to me that these debates, managed in many instances, and on both sides, with great abilities and eloquence,

quence, afforded a body of materials, which it imported much to the people of this country that they should know well, and should deliberate upon with that judgement which proceeds from knowledge, and increases it. I resolved accordingly to state some of the outlines. It is neither the interest of Government nor of the people, (if, in common sense and honesty, the people and the government could be separated) that the grounds and principles of any political measure should be unknown or misunderstood; much less of a measure so great and important as that which is involved in this great question. True knowledge, like true liberty, cannot be too much diffused. It is error and anarchy, usurping their names, that vex and destroy the world. Passive consent and ignorant

norant resistance are equally the means, the causes, the effects, of despotism. It is my hatred to the means, to the causes, the consequences, that has dictated this publication.

It was intended (as I have said) to have been published before now. It is not yet too late to publish it. It is not long, and will, I trust, be satisfactory. The nation ought to have only one mind upon the measure of which it treats.

THOUGHTS, &c.

THAT excellent and salutary statute, known, in common language, by the name of the *Habeas Corpus* Act, though, originating from accident, and in despotic times, is not inferior to almost any of those wise enactments which constitute and guarantee English freedom. Its modern date (for its beneficial effects have been felt among us little more than

a century) does not put it below the greatest and oldest records of our free monarchy. Indeed, it existed in its *spirit* from the earliest times, as it will continue (I trust) both in spirit and form, to our latest posterity. From the period that it began formally to exist, and to operate in a direct and fixed manner, the same free constitution that gave it birth, has found it necessary, from circumstances, and temporarily, to suspend it. I believe the present is the *tenth* time in a space of little more than an hundred years. That this almost *decennial* suspension should not have impaired the energy of the statute, is a proof at once of its own admirable nature, and of the excellence of that constitution which made, which modifies, and which, by modifying,

ing,

ing, preserves it. As the statute exists for the constitution, and not the constitution for the statute, the safety of the people has, again and again, suspended its operations. As without the statute, the constitution would be deprived of one of its best and most useful energies, the suspension has, therefore, never been long, nor has the temporary disuse ever weakened the efficacy. Having ceased for the public good, for the public good it revived. I speak this generally, and not as in the strictness of historical detail. In this last view, there may have been times, in which it was made without sufficient cause to cease, or in which it revived without sufficient cause, or in which it was made to revive too soon.

This *more* and *less* makes no part of the present consideration.

Our consideration at present is simply this, whether what has been done so often before, what has been done in *all* cases without any general detriment to the state, done in *many* cases with most signal and certain advantages to the state—whether *this* cannot *now* be done, ought not *now* to be done ; and if to suspend *that* for the *tenth* time, which has been *nine* times suspended before, is now not to *suspend* but to *destroy* ? The cry of the enemies to the present measure is (and now sounded most loudly throughout the nation) that to suspend the *Habeas Corpus* Act is to annihilate the constitution. If this is meant as a
general

general proposition, then the constitution has already been annihilated *nine* times in the short space of a century. How it has come to pass, that it still exists to be annihilated again, and how it has been re-produced so frequently from nothing, those must tell who can. I cannot.

If it be not meant as a general proposition, then the assertion must rest on some *particular* facts which distinguish the present from all former occasions. What are these facts?

The enemies of the measure have never distinctly stated any such facts. Very much the contrary. They find it, indeed, necessary to say, that there *are* facts,

facts, that there are particular causes, which make the suspension of the *Habeas Corpus* Act, at present, a measure most dangerous and fatal.—They *say* this. But their facts, when *forced* from them, are empty arguments, and their particular grounds are mere loose general negations of danger. They say the constitution is in no risk, and needs therefore no remedy. But for this they only give us their word; in my mind, a very slender security against *any*, much more against *such* danger.

Indeed I should, upon such a subject, take nobody's word. I do not like the *Indian* system of *accounting upon honour*. It is not a matter of trust or confidence. Men *ought* themselves to see, and if
they

they are not wilfully blind, *must* see. Danger never stared this nation in the face more presently and palpably.

It is not *war* that makes the danger. This nation has often been at war with all the security, and with more than the security, of peace. It is the general system, and the general circumstances; a system and circumstances which might warrant *new* means, such as to our ancestors were wholly unknown; instead of merely calling out, against anarchy and misrule, the *old*, approved, and usual, safeguards of our constitutional freedom.

In the House of Commons it was said, (in the debate of the 17th of May) by a

man whom this people will long remember, as among the prime asserters of their liberties and safety, that the struggle was now with the principle of destruction, in defence of all the means, ends, and principles of virtuous and wise stability.—It is certainly so. The statesman who expressed these sentiments was not then in power. He now is in power. He does not now deserve praise the less on that account, but it renders praise less necessary to be given. His own actions will praise him.

What was said by this statesman, I shall not say again. Yet it is a subject that, if not pressed with utter indiscretion, cannot be pressed too much on the minds and judgement of Englishmen.

To

To deliberate here well and wisely, is to decide.

We are at war for our existence. This is *one* fact. I need not to establish it; for with some, not material, variation of meaning, it is acknowledged by all.— We are at war for our existence, not by any fault of our own, but from strong necessity; from the invasion on all our rights, made by unmeasured ambition. This is a *second* fact; but which is far from being acknowledged. I am to prove it. When it is proved, all is ended. There can be no question *then*, either as to time or exertion. The exertion must last till we are put in safety. It must be such as shall put us in safety most speedily. We must do all we can, and we

must take all the time necessary to do all we can. In other words, we must act boldly, and must act wisely.

While we are thus struggling against a cruel foreign foe, and in such a cause as I have stated, to take all necessary precautions against domestic conspiracy, is a duty which does not even merit praise, as being a duty so obvious and so urgent.

What it would be fatuity to neglect, it never can be praise to execute. It is mere and simple duty. The Ministers would be criminal indeed who had neglected such precautions in such danger. They must make out a case. But, the case once made out, the measures taken upon it, and correspondent to it, are not merely justified : the not taking them would de-
 2 prive

prive Ministers, and for ever, of all possible justification.

The case is made out by the *necessity* of the war ; of that war in which, ALL agree, our safety and existence are involved ; of that war, which (as Mr. Fox has declared) is a war of a sort that we cannot see its termination. I adopt his expression and reject his meaning. I do not speak of the war as if it had no principles in which it begins, and by which it must end. It has such undoubtedly. It has such, more than any war that ever was undertaken. But its end can only be by the destruction of the opposing principle. Former wars, compared with this, have been personal merely, and in the strictest sense of that word. This is a war of

another sort. It is, indeed, (to use the phrase of Mr. Fox) a war—yes, a war—of conquest or death:—*bellum internecinum*. Jacobinism must triumph, or Jacobinism must be destroyed. His expression is right. Would to God his ideas were right also! Perhaps the time is not far distant when they shall.

This war, this *bellum internecinum*—(I speak in the real sense of the expression, not the false sense that has been given to it) arose (the democratists tell us) from the treaty of Pilnitz. Mr. Fox tells us *this* likewise. We provoked, he says (the despots of Europe provoked) the mild quiescent spirit of France to that defensive hostility, which (himself does not deny) is now turned into active and
wide

wide destruction. A reasonable man might think, that the cause should be forgotten in the consequences. Our *friends* who oppose this war, and *especially* our *enemies*, have no such notion. Be the consequences what may, they are resolved not to forget the cause; or, if the real cause, when remembered, should make (as it does make) against them, they are still the more resolved to invent a wrong one.

In one sense, the treaty of Pilnitz may have been the cause of this war: in that sense in which pusillanimity and folly have been, and will ever be, the cause of much and fore evil. The time required other measures. Hostility had already been delayed too long; and this
treaty

treaty (as they call it) delayed it longer. In so far as not fighting when you should fight is the cause of war, the treaty of Pilnitz is the cause of war. In every other respect, the jabbering that is held about it is worse than folly,

A system had been set on foot in Europe to overthrow all established society. To say that any thing was established, was to say that it was to be overturned. As the first grand accomplishment of this design, the King and Queen of the greatest and oldest European Monarchy were dragged from their palace into ignominious and close confinement; not only without any charge made against them, but on the declared and exclusive ground, that the *people* were entitled to deal

deal with *kings* as they *pleased*, and *merely* because it might be their *pleasure*. All Europe saw, and all Europe suffered this. The perpetrators of these crimes *saw* likewise, and they *felt*, that there was no longer any law of nations in Europe. That law of nations had sanctioned wars for sugar, tea, coffee, and cats-skins ; for an indignity done to a yard of cloth, or for the œconomy of saving a pound of powder. These things had been done on the principles of the *jus gentium*, as long recognized, and most extensively practised in Europe. Now, an attack upon all government, a violation of all moral and political law, was held (or was neglected as if it had been held) a matter wholly below the consideration of nations. The old practice

tice of war was often bad enough. The new system of peace was infinitely more fatal and disgraceful. It was the licence of insult and wrong, and the tying up of the hands of justice.

This cold climate of moral politics was the very air in which the new metaphysics were sure to blow. There are certain plants destined for certain regions. The new metaphysics are indigenous to an icy and treacherous heart. They grew and sprouted in this chilling season, and imparted their deadly damps to that atmosphere of night, which at once surrounded, and was created, by them. Many wise and good men in this country could not see through this gloom. One man alone saw ; saw all ; the causes
and

and the consequences. Had they been seen universally, there might either have been no war, or a war of a very short duration. Now that it has been gone into, lately, yet the more necessarily that is lately, we must now persevere, as we might then have conquered.

Means are necessary in persevering resistance, which not only are not required, but might be detrimental, in reasonably expected conquest. In all resistance of this sort there must be a mixture of fear; fear justifies precautions; and precautions are restraints. Thus, if we be active abroad, we must be careful at home. Earliness would have rendered courage only necessary. Lateness now demands also wisdom.

D

True

True wisdom will not, indeed, have recourse to new expedients, till all the old have been exhausted and have failed. In such a case, new expedients become justifiable on the same grounds that the old became so. We are not yet arrived at that point. I trust we never shall. Should the melancholy period come, it will be owing much to the opposers of the war; indeed almost wholly to them. In the mean time, as the old measures are sufficient, only old measures have been used; and their being old is their justification, provided we are in any of the old cases.

We are in more than any of them. I agree with a great and distinguished man, that the British constitution is not a thing

of abstraction ; that it is to be loved in all its parts and for all its parts. If it wanted such a security and ornament, as the enactments of the *Habeas Corpus* Act, it would be much less estimable and sorely defective. But we are not deprived of this security and ornament—we have it still—we have an *Habeas Corpus* Act to suspend, and an *Habeas Corpus* Act to restore to energy. It was made for both purposes, and we shall long preserve it for both purposes.

These appear to me to be the grounds of the measure and the justification of it. Nothing is done by it to destroy liberty ; nothing to erect despotism. As much as any person do I abhor despotism ; but of all despotism the most horrible is the
despotism

despotism of pretended liberty. The present measure does not wear any such face. It is in the clear line of our old policy and government, justified according to our old plain sense, and regulated by our old morality. Other means may destroy that government. But those now employed are sure, in the ordinary course of events and Providence, to keep its establishments and to preserve it.

Ex 240

5/28/18

F I N I S.